

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
WESTERN DIVISION

VINCENT GILLESPIE )  
AND DOES 1-100, )  
Plaintiffs, ) 3:03-cv-30196-MAP  
v. )  
ELI LILLY AND COMPANY )  
AND DOES 1-100, )  
Defendants. )

**DEFENDANT ELI LILLY AND COMPANY'S  
MOTION FOR JUDGMENT ON THE PLEADINGS  
AND MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

COMES NOW defendant Eli Lilly and Company ("Lilly") and, pursuant to FED. R. CIV. P. 4, 12(b)(4), 12(c) and 12(b)(6), respectfully requests that this Court dismiss plaintiff's claims against Lilly with prejudice. This case should be dismissed because plaintiff did not serve Lilly with a summons, and process was therefore insufficient in this case. In addition, each enumerated count in plaintiff's Complaint fails to state a claim upon which relief can be granted, and Lilly is entitled to judgment on the pleadings.

WHEREFORE, for reasons more fully set forth in the accompanying brief in support of this motion, defendant Eli Lilly and Company respectfully requests that this Court enter judgment in Lilly's favor and against plaintiff, dismiss plaintiff's claims with prejudice, and grant such other relief as the Court may deem just and proper.

**REQUEST FOR ORAL ARGUMENT**

Defendant Eli Lilly and Company believes oral argument may assist the Court and therefore requests oral argument on this motion.

Respectfully submitted,

**ELI LILLY AND COMPANY**

*Michelle R. Mangrum*  
\_\_\_\_\_  
Michelle R. Mangrum  
Shook, Hardy & Bacon LLP  
600 14<sup>th</sup> Street, NW  
Washington, DC 20005-2004  
(202) 783-8400

Andrew See  
Shook, Hardy & Bacon LLP  
One Kansas City Place  
1200 Main Street  
Kansas City, MO 64104-2118  
(816) 474-6550

James J. Dillon, P.C. (BBO # 124660)  
Foley Hoag LLP  
155 Seaport Boulevard  
World Trade Center West  
Boston, MA 02111-2600  
(617) 832-1000

Dated: October 20, 2003

**L.R. 7.1 CERTIFICATE**

I, Michelle R. Mangrum, one of the attorneys for defendant Eli Lilly and Company in the above-captioned matter, hereby certify that counsel for Lilly conferred with plaintiff about the within motion and attempted in good faith to resolve or narrow the issues presented herein.

Michelle R. Mangrum  
Michelle R. Mangrum

Dated: October 20, 2003

**CERTIFICATE OF SERVICE**

I hereby certify that on this 20th day of October, 2003, a true and correct copy of Defendant Eli Lilly and Company's Motion for Judgment on the Pleadings and Motion to Dismiss Plaintiff's Complaint was mailed via first class U.S. Mail, postage prepaid thereon, to the following *pro se* plaintiff:

Vincent Gillespie  
P.O. Box 741  
Northampton, MA 01061

*Micelle F. Mangrum*  
Micelle F. Mangrum  
ATTORNEY FOR DEFENDANT  
ELI LILLY AND COMPANY